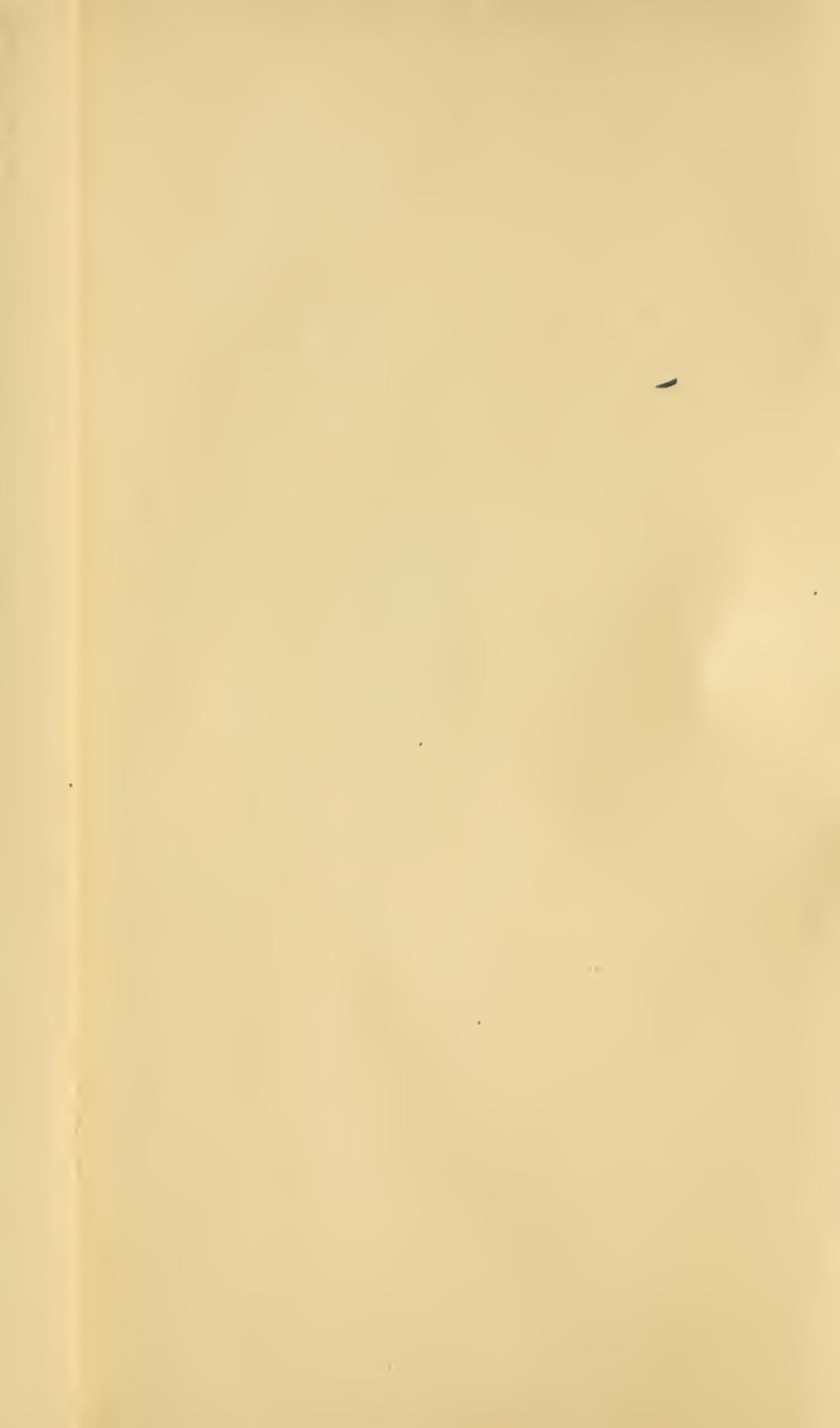


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HON. SAMUEL HOWE,

b. 1. 6. 1828.

DELIVERED

AT THE OPENING OF THE COURT OF COMMON PLEAS, AT WORCESTER,
ON THE THIRD DAY OF MARCH 1828, AFTER THE USUAL
CHARGE TO THE GRAND JURY.

PUBLISHED BY REQUEST OF THE BAR OF THE COUNTY.

BY JOHN M. WILLIAMS, Esq.
One of the Associate Justices of the Court.

Worcester:
FROM THE AEGIS PRESS.

GRiffin AND MORRILL, PRINTERS.
1828.

To the Gentlemen of the Bar of the County of Worcester.

The following voluntary tribute to the memory of our departed friend is, at your request, submitted to your disposal. My only regret is, that it is not more worthy of his merits and of your acceptance.

I am, Gentlemen, with much respect,

Your obedient Servant,

J. M. WILLIAMS.

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PROCEEDINGS OF THE BAR.

At a meeting of the members of the Bar, in the County of Worcester, held in the Court Room, March 4, A. D. 1828, the following preamble and resolutions were unanimously adopted:

Whereas, it has pleased Divine Providence to remove, by death, during the last vacation, a distinguished jurist and an approved judge, the Honorable SAMUEL HOWE, of the Court of Common Pleas, it particularly becomes the members of this Bar, who have been the frequent witnesses of the extent and variety of his learning, his promptness and despatch in the business of the Courts, and his uniform urbanity of manner and kindness of heart in all situations, to record here, in the scene of his last judicial labors, their testimony of the virtue and worth of him, whom, while living, they esteemed as their friend, and honored as the benefactor of their profession. Therefore,

Voted, That the members of the Bar of the County of Worcester unite with their brethren throughout the Commonwealth in deeply deplored the death of Judge Howe, who was equally eminent for the readiness and tenacity of his memory, the extent of his researches, the justness of his discrimination, the soundness and decision of his judgment, and his unerring rectitude of purpose: That they sincerely participate in the sorrow manifested at his untimely decease by the citizens of this County, who uniformly retired from the Courts in which he presided, with a grateful impression of his benignity, integrity, and impartiality, and, without presuming to measure his merits as a lawyer with precision, pronounced him to be a great and good man: That they cordially sympathize with the bereaved family of the deceased, to whom the recital of his merits as a citizen and a judge, of his devotion to letters and the cause of education, and of the many and endearing virtues of

his social and private life can bring with it only the melancholy reflection, that the loss, which they have sustained, is indeed irreparable. But to them and to all, who were associated with him, he has left the consoling example of a life, uniformly influenced and regulated by the precepts and spirit of that religion, which sustained him by its hopes, and animated him by its promises, in the dark hours of sickness and dissolution.

Voted, That a copy of the above resolutions be transmitted to the family of the late Judge HOWE.

Voted, That a copy of the Address delivered by His Honor Judge WILLIAMS, relating to the life and character of the late Judge HOWE, be requested for publication.

Voted, That the gentlemen of the Bar wear the usual badge of mourning during the present term of this Court and the next term of the Supreme Judicial Court in this County.

ADDRESS.

DURING the vacation which has now elapsed, the surviving members of the Court have lost an associate and brother, the members of the bar a friend, and the community a faithful magistrate and able expounder of the laws. It would be impossible if it were desirable, and it certainly would not be desirable if it were possible, to forget, on this occasion, our recent bereavement. At the last term of this Court the lamented Judge Howe presided. Within these walls you witnessed the performance of his last public duties. Here, while his corporeal frame was sinking under the pressure of a malady which proved to be mortal, his intellectual buoyance and elasticity carried him—we may say triumphantly carried him—through the too arduous labors of a protracted session, and enabled him to accomplish the task which he had assumed. Here he finished his work, and here he may be said to have fallen in the faithful discharge of the trust committed to him. Had his

life and his health been spared, the duties which I am now called here to perform would have devolved on another. All the circumstances of our present meeting forcibly remind us of the afflicting loss which we have sustained by his death. There seems, therefore, to be peculiar propriety in pausing, before we proceed in the customary routine of our forensic avocations, to contemplate, for a moment, his life and character, and to pay a brief tribute to his memory.

With Judge Howe, in his early life, I had no personal acquaintance. I knew him not during the period of his professional labors at the bar. My personal acquaintance with him commenced on his appointment to the Judicial office which he dignified by his talents and adorned by his virtues. Of his early diligence and zeal in the acquisition of knowledge, I cannot, therefore, speak from personal observation. But the stores of legal learning with which his mind was fraught, his extensive and familiar acquaintance with legal principles and his accurate discrimination in applying them as occasions required, are incontrovertible evidence of early and persevering industry and application. Such acquisitions cannot be made by mere genius however brilliant, or by mere reading however extensive. They require habits of thought, of reflection, of attention; a vigilant exercise of the judgment, and an untiring exercise and application of the higher powers of the intellect.

For these qualities our departed friend was eminently distinguished. At an early age he had, by the force of his talents and industry, raised himself to an eminence in his profession which few attain. He was ardently attached to the profession which he had selected. He devoted himself to the study of it as a science, and not merely as a series of insulated cases, each decided on its own independent circumstances. He endeavored to ascertain the reasons and foundations of the law. He examined the principles on which it is grounded, traced their mutual relations and dependencies, and considered the various decided cases as so many distinct but not independent illustrations of those elementary principles, and the various modes of their practical application. These qualities and habits of his mind, combined with his moral worth, attracted the respect, esteem and confidence of the community. Before he had fully reached the meridian of life, he was acknowledged, by those who best knew him, to have few equals in his profession. Accordingly on the first organization of this Court he was placed on the judicial bench.

Here he administered justice with conscientious fidelity and distinguished success. You have witnessed his judicial demeanor. His ardor in the investigation of truth, his energy and skill in the dispatch of business, the rapidity and accuracy of his perceptions, his prompt recollection of leading and

analogous cases, his careful exercise of the powers of discrimination, and especially his candor, impartiality, independence and unaffected urbanity of deportment were traits of character worthy of grateful commemoration. His manners on the bench, as in the social circle, were simple, artless and unconstrained. He assumed no artificial dignity; he indulged no jealous fears lest the respect due to his official station should be violated. He wished to be approached and addressed by all with perfect freedom and to commune with all the members of the bar as with brethren. He never acted a part for the sake of display and required no homage but that courtesy and decorum of mutual intercourse which every cultivated and refined mind spontaneously bestows. I have heard him express his regret that im-memorial custom still required every address to the Court to be preceded by an established formula of respectful words. It was this desire of familiar intercourse which sometimes prompted him to interrupt counsel by a suggestion of his own sudden impressions. It was not from an eagerness to pre-clude discussion, from an impatience to announce his conclusive decision, or from a reluctance to listen to argument, but to suggest, at the moment, the difficulties which were presented to his own mind, that they might, if possible, be obviated. His judgment was ever open to receive new light from whatever

source. No pride of opinion prevented him from yielding his prepossessions, if he had any, to the force of truth, and he always made his will submit, with ready obedience, to the dictates of his understanding. His feelings of kindness, while on the bench, were not confined to the members of the bar and the permanent officers of the Court. They embraced all who were connected with him, though but transiently, in the administration of the law. I have heard him declare that, when he dismissed a jury at the close of a term, he felt their departure as a separation from his friends.

Possessing these eminent qualifications for the administration of justice, while he was yet but on the threshold of intellectual maturity, the public sentiment seemed to have designated him for a higher judicial station, where his merits would have been still more conspicuous, and the sphere of his usefulness still more extensive and permanent. In the mean time his active mind and benevolent disposition sought an appropriate employment and gratification. He assisted in the establishment of a law school for the instruction and guidance of the youthful votaries of legal science, who hastened, at his invitation, to enroll themselves as his pupils. In this situation he manifested an aptness to teach, a delight in imparting knowledge, an affectionate interest in the progressive improvement of his students, a familiarity

and suavity of address, and a uniform kindness of deportment, which softened and subdued the harsher features of black-letter lore, and spread attractions over those departments of jurisprudence which are sometimes repulsive to the youthful mind. By familiar conversation; by free and unrestrained intercourse adapted to the several capacities and tastes of his pupils, as well as by formal and stated lectures and recitations, he endeavored, not merely to impart a knowledge of legal principles and their application, but to excite that love of legal science, and that ambition to excel, which would tend to stimulate enquiry and thus to elevate the standard of professional character. If any are present who have enjoyed the benefits of his superintending care in the initiatory studies of their profession, their hearts will more than respond my feeble and inadequate delineation of his merits. They will dwell on the memory of his services with grateful recollections, and will sympathize with their younger brethren, who, in the midst of their course, are deprived of his counsel and guidance.

Though the science of jurisprudence was the principal, it was not the exclusive object of Judge Howe's attention and pursuit. In whatever was interesting to humanity, he also was interested. The current topics of public discussion, the politics and literature of the day, the various plans for internal

improvement and for ameliorating the condition of society, in short, every subject of general conversation attracted a portion of his attention, and upon all, his opinions and remarks were listened to with respect, with pleasure and with profit.

The education of youth in sound learning and correct principles was, in his view, an object of vast moment. He considered our primary schools, our high schools, and our academies and collegiate institutions, not merely as instruments and means of intellectual culture, but as exercising an immense moral power in the community, and as influencing, for good or for evil—the destinies of all succeeding generations. With these enlarged views of the nature and objects of education, he accepted his late legislative appointment as a member of the board of trustees of Amherst College, and with the same liberal feelings, he descended to the more humble, but perhaps not less important duties of a member of the school committee in the village of his residence, to watch and direct the details of primary instruction.

These are not the only claims which the character of our departed associate and friend presented to our respect, esteem and affection. His character was uniform and consistent through all the various relations of life. I will not attempt to pourtray the innumerable nameless, noiseless acts of goodness which cheered his quiet and hospitable home. It is not for

us to invade the sanctuary of his domestic retirement ; to proclaim the invisible and unrecorded virtues of the household ; to trace the numerous tender ties which bound him to his family ; or to describe the bitterness of that anguish, and gaze on the gushings of those sorrows which were produced by the blow that severed them. Here a stranger may not intermeddle. We must stand apart in silent sympathy, and leave them to the soothings of time and the consolations of religion.

In the more extended and visible relations of social life, all, who were acquainted with the deceased, will bear testimony to the excellence of his character. His heart was full of kind and generous feelings. His frankness and sincerity immediately won the confidence and esteem of all who approached him. He was without guile and appeared to harbor nothing in his heart which he wished to conceal. No envy, no malice, no evil surmisings, no wrathful passions rankled there. He was willing that all its emotions and desires and impulses should be seen and understood and scanned. If he was ambitious, it was an ambition of the noblest kind. It was not the spirit of domination. It was not a thirst for power and command. It was not that spirit which prompts to exertion merely because another is higher, or because pride or vanity is wounded. It was a benevolent ardour—an enlarged and honorable emulation, founded

on a love of what is excellent, and a desire to let his light shine for the improvement and happiness of his fellow men.

On the various political questions which have, from time to time, agitated the community, he adopted his opinions with deliberation and defended them with earnestness, but not with acrimony. He was the uniform and consistent advocate of principles which appeared to him to be sound ; of measures which, in his judgment, had a tendency to promote the general welfare ; and of men who recommended and pursued those measures : But he never surrendered his judgment to the influence of the spirit of party, or his heart and affections to its withering dominion.

It would be doing injustice to the character of him, whom we commemorate, to consider him only in his professional, literary, social, and civil relations. He is worthy of remembrance also in his higher and holier relation—in his character as a religious man. This was the crowning excellence which pervaded and sanctified all his other estimable qualities. The testimony of his life, as well as that which he gave in his dying moments, to the power of his faith, ought not to be passed over in silence. He had carefully studied the evidences of divine revelation. He was convinced of its truth, and made a public profession of his faith. He examined that revelation for himself, and formed his own opinions of the duties which

it inculcates and the doctrines which it reveals. I shall not speak here of the peculiarities of his religious creed. This is not the place or the occasion for theological discussions. He may have erred—he may have erred *greatly*, in forming his opinions upon some points which are deemed important by many wise and good men. He was too humble in his estimate of his own powers to arrogate to himself an infallibility of judgment. To his own master he must stand or fall. He was ready to listen, with respectful attention, to the opinions, and to weigh the arguments of others; but conscious of his personal responsibility for the faithful exercise of those powers which his God had bestowed upon him, he refused to surrender his judgment to human authority or to require others to submit to his own.

Of his heart we can judge only by those external acts and expressions which indicate its secret exercises and invisible movements. His life and conversation appeared to be such as become the gospel, and we have, therefore, a reasonable assurance that religion, in its purity and power, dwelt in his heart. As in life he had manifested the purifying influence of christianity, so in death he experienced its sustaining sufficiency. His departure was not in darkness and dismay. It was illuminated with the rays of heavenly light, and preceded by an hour of strength and peace and composed recollection. During this tem-

porary relief from the pressure of disease, which seemed to have been granted to him in answer to his prayer, he expressed, with much earnestness, his unwavering faith in the christian religion; the happy support which he derived from it in the prospect of approaching dissolution; his trust and confidence in the mercy of God as revealed by the Saviour, and the satisfaction which he felt in the consciousness of having endeavored uprightly to discharge his duties in every station. His last words were words of prayer to his Father in heaven, into whose hands he calmly resigned his spirit.

It is not for us to fathom the counsels of Omnipotent wisdom, and to explain why such a man has been taken from his family, his friends and the community, in the midst of his usefulness and in the full vigor of his intellectual manhood. This is among those mysteries of divine Providence to which it becomes us to submit in adoring silence. But we may all profit by the solemn admonitions which an event so melancholy is calculated to impress on our hearts. We may profit by the contemplation of his example which allures to virtue; by the contemplation of his life, which was consecrated to life's great purposes, to duty and to usefulness; and by the contemplation of his death, the darkness of which was gilded by those hopes of eternal life which his religion inspired.

May such contemplations have their appropriate, salutary influence. May they purify our affections, elevate our desires, sanctify our purposes, quicken our diligence in duty; and while they warn us of our feeble hold on life, may they teach us to apply our hearts to wisdom, and our hands to the great work of preparation for our own approaching departure.

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